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RUEHCV/AMEMBASSY CARACAS 8984  
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RUEHME/AMEMBASSY MEXICO 3258  
RUEHBR/AMEMBASSY BRASILIA 6471  
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DEPT FOR WHA/AND, WHA/CEN, WHA/EPSC, EB/IFD/OFD, EB/CBA,  
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TREASURY FOR OASIA/INL, DO/GCHRISTOPOLUS  
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SUBJECT: COMMERCIAL DISPUTE SUCCESS STORIES - MOTOROLA,  
PARSONS AND SCIENTIFIC GAMES

11. (SBU) Summary. Aside from the ATPDEA commercial disputes, Embassy Lima handles a substantial number of other commercial disputes. Over the past two months, three of these cases have been successfully resolved in favor of the U.S. companies. In Motorola's case, the Tax Court disagreed with the Peruvian Tax Authority's (SUNAT) assertion that Motorola owed more than \$20 million in back taxes. In the Scientific Games case, Post worked closely with key GOP officials and President Toledo to stop the enactment of a proposed law that would have caused a U.S.-led consortium's investment of \$30 million to leave operations in Peru. Parsons/Cesel, after winning its arbitration case against PARSSA in 2004, received two partial payments of \$1.9 million and approximately \$382,000 in December 2005 and January. These cases highlight Post's advocacy efforts and coordination with the GOP to help resolve pending cases and improve the ability of U.S. companies to do business in Peru. End Summary.

Motorola

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12. (SBU) Between 1997-1998, Motorola worked with Telefonica de Peru to build and deploy the first CDMA mobile phone network in Peru. The term of the contract was four years; the value of the project was \$500 million. At the end of 1998, the Peruvian tax authority (SUNAT) charged Motorola with having incorrectly deducted certain expenses in its 1997 tax filings. In 2000, SUNAT used the same basis to charge Motorola for incorrectly filing its 1999 tax return. SUNAT sent the company two bills for fines and penalties totaling \$4.8 million for the 1999 filing and \$16 million for the 1997 filing.

13. (SBU) After several years, the 1999 case came before the Tax Court in mid-2004. In September 2004, Motorola argued before the Court that its expenses noted on its tax filings in 1999 were legitimate business expenses. In December 2004, the Tax Court ruled in favor of Motorola. However, the GOP had approved a law on October 24, 2004 that allowed

SUNAT to challenge the tax court's decision and the case was referred to the Supreme Court. In January 2005, the Supreme Court upheld the Tax Court's decision in Motorola's favor regarding the 1999 filing. SUNAT, due to lack of support from the Ministry of Economy and Finance (MEF) and the Tax Ombudsman, was unable to challenge the Supreme Court's decision.

14. (SBU) The Supreme Court decision and subsequent actions by the MEF and the Tax Ombudsman established a precedent to resolve the 1997 case using the same legal considerations. The Embassy had worked with the MEF, encouraging it to turn down SUNAT's request to take the matter to the Supreme Court. The MEF, however, allowed the case to move to the Supreme Court. On December 9, 2005, the Supreme Court ruled in favor of Motorola on its 1997 tax case. The overall savings to the company was \$20.8 million.

#### Scientific Games

15. (SBU) Georgia-based Scientific Games Corporation (SGC) contacted us in early July to seek USG assistance in saving its \$30 million investment in the Peruvian Lottery system. The company had partnered with Louisiana-based International Lotto Corporation and three Peruvian handicapped associations to form a consortium in Peru. The consortium provides 600 jobs for handicapped Peruvians, income for several well-known Peruvian associations for the handicapped (Anne Sullivan Center for the Blind) and tax revenue for the Peruvian government. The U.S. company's Greek competitor had initiated a law in Congress that would have changed the legal framework under which the investment had been made, thereby forcing the U.S.-led consortium out

of business.

16. (SBU) On July 5, the Ambassador sent a letter to President Toledo on behalf of the company (Note: the American Chamber of Commerce sent letters in June to both the Prime Minister and the Minister of Women's Affairs to make them aware of the issue. The letters did not prevent the Council of Ministers from approving the law. End Note.) That same day, President Toledo and his Cabinet attended the U.S. Independence Day reception at the Ambassador's residence. Ambassador Struble and the Commercial Counselor raised the issue directly with President Toledo, who agreed to examine the case. On July 6 in the morning, Scientific Games local counsel met with the President's staff to review the problems with the law.

17. (SBU) As a result of these combined efforts, President Toledo issued a resolution against the law on July 6. The next day, several Peruvian Handicapped Associations rallied in front of the Presidential Palace to express their appreciation to President Toledo for his action.

18. (SBU) In December 2005, patrons of the Greek competitor once again introduced a bill into Congress to modify the investment framework for gaming companies. We responded again by counseling Scientific Games' legal counsel and calling MEF interlocutors to make them aware of the repeated attempt to force a U.S. company out of business. The bill died in committee. Legislators then presented and unanimously passed a bill that allows the company to continue operations.

#### Parsons

19. (SBU) Parsons/Cesel entered into a consulting services agreement with state-owned PRONAP (now PARSSA) to provide design services for potable water supply and wastewater systems. During the performance of the contract, Parsons/Cesel performed additional work at the direction of PRONAP but had yet to receive payment. Parsons/Cesel initiated arbitration in June 2001 in order to recover the

costs for this additional service. In March 2004, the arbitration panel found in favor of Parsons and ordered the state-owned company to pay approximately \$1.5 million. The GOP disagreed with the binding arbitration decision and appealed to the Judiciary in April 2004, requesting an annulment of the arbitration decision. According to the GOP, the arbitration panel was neither independent nor impartial, as PARSSA was not included in the process of determining the arbiters.

¶10. (SBU) The case proceeded to the Judiciary for action. After a year, in August 2005, the Judiciary issued its ruling in favor of Parsons/Cesel, denying a GOP appeal to reject the binding arbitration. The court ordered PARSSA to pay the amount owed, which with interest could total approximately \$3 million. On September 2, the Ministry of Housing appealed the August ruling in favor of Parsons, claiming there were irregularities in the handling of the arbitration case. Parsons/CESEL formally appealed the submission of the case in October 2005, citing a mid-July Supreme Court Directive that instructed the Judiciary to not overturn arbitration decisions.

¶11. (SBU) After the Ambassador and Commercial Counselor sent repeated letters to the Minister and Vice Minister of Housing on Parsons behalf, the company received a \$1.9 million partial payment for its arbitration award on December 23. In early January, Parsons received a second partial payment of soles/1.3 million (approximately \$382,000). Parsons and the GOP continue to negotiate the final payment of the remaining soles/480,000 (approximately \$141,000) in legal fees.

Comment

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¶12. (SBU) The GOP, with the assistance of Commercial Disputes Coordinator Aurelio Loret de Mola, has made strides to resolve the ATPDEA disputes. Success, however, breeds more work: the number of U.S. companies that have approached the Embassy requesting advocacy has increased. Post, specifically the Front Office, FCS and Econ offices, have established strong working relationships with key GOP officials to resolve these and other cases. The resolution of these cases, particularly Parsons/Cesel, with the Supreme Court Decree to uphold arbitration awards, should have far-reaching positive effects for companies doing business in Peru.

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